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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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13
14 PAUL MAZZAFERRO, Individually and On) CASE NO.: 13-cv-02342-VC
15 Behalf of All Others Similarly Situated,)
16 Plaintiffs,) **REPLY MEMORANDUM IN**
17 v.) **SUPPORT OF DEFENDANTS'**
18 ARUBA NETWORKS, INC., DOMINIC P.) **MOTION TO DISMISS**
19 ORR, MICHAEL M. GALVIN, and KEERTI) Date: January 22, 2015
MELKOTE,) Time: 10:00 a.m.
20 Defendants.) Before: Hon. Vince Chhabria
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1 Defendants respectfully submit this memorandum in support of their motion to dismiss
 2 (“Opening Brief” or “MTD”) and in reply to plaintiff’s [Corrected] Memorandum in Opposition
 3 to Defendants’ Motion to Dismiss, Dkt. No. 101 (“Opposition” or “Opp.”).

4 **INTRODUCTION**

5 Plaintiff contends in the Opposition that it “dramatically revised” its second amended
 6 complaint (“SAC”). The limited changes plaintiff cites, however, do not cure the deficiencies
 7 previously identified by the Court and thus fail to alter the outcome mandated by the PSLRA.

8 *First*, plaintiff notes that the original class period has been “significantly shortened” from
 9 twelve to nine months. The slightly shorter period, however, is no less arbitrary, and plaintiff
 10 continues to challenge the same statements that the Court held failed to plead falsity.

11 *Second*, plaintiff points to the unremarkable fact that Aruba utilizes Salesforce software,
 12 which allegedly provided information regarding customer wins and losses. Nowhere, however,
 13 does plaintiff plead facts showing: (i) specific Salesforce information known by the Defendants
 14 at the time of each challenged statement; or (ii) the requisite contextual information identified by
 15 the Court. In the absence of such facts, plaintiff fails to show that the unspecified Salesforce data
 16 rendered any statement false, much less that any defendant knowingly made a false statement.

17 *Third*, plaintiff points to a handful of new CWS who offer little more than personal
 18 opinions and speculation and thus fail to withstand the rigorous scrutiny imposed by the PSLRA.

19 This action is precisely the type of case that the PSLRA was intended to end – *i.e.*, a
 20 company suffers a short-term business setback and then must defend itself in a lawsuit based on
 21 fraud-by-hindsight. The SAC should be dismissed with prejudice.

22 **ARGUMENT**

23 **I. PLAINTIFF FAILS TO PLEAD AN ACTIONABLE MISREPRESENTATION**

24 Like the SAC, the Opposition continues to parrot the same theories and statements the
 25 Court previously found lacking. Thus, despite multiple opportunities, the SAC remains devoid
 26 of particularized facts describing contemporaneous, contradictory information known to the
 27 Defendants that rendered each statement false when made. *See* MTD at 4-11; *see also Scandlon*
 28 *v. Blue Coat Sys., Inc.*, 2013 WL 5313168, at *3 (N.D. Cal. Sept. 23, 2013) (“Plaintiff has not

1 meaningfully addressed, let alone cured, the problems identified in the prior order that (1) it had
 2 not sufficiently identified what representations allegedly were false and why, (2) why a
 3 substantial portion of the statements . . . are not best characterized as ‘puffery’ . . . and, (3) how
 4 mere possession of some negative information requires a company to refrain from . . . expressing
 5 opinions reflecting a ‘rosy’ prognosis . . . ”).

6 **A. The Majority of the Challenged Statements Are Non-Actionable Puffery**

7 Many of the statements plaintiff challenges are generalized expressions of corporate
 8 optimism, including the very statements previously found to be puffery. *Compare e.g.*, Opp. at 3
 9 (challenging alleged statements in ¶63, including “we think that we are very differentiated” and
 10 “I feel like we are in the most superior position,” which are characterized by plaintiff as “False
 11 Statement #1”) & Opp. at 7 (citing ¶¶75 and 80, “we are very, very bullish” and “[w]e are
 12 pleased with our continued momentum”), *with* Order at 1 (finding many of the statements,
 13 including “vague comments” such as “I feel like we are in the most superior position,” “[w]e are
 14 pleased with our continued momentum,” and “we are very, very bullish”, to be “non-actionable
 15 puffery”) (citation omitted); *see also* Opp. at 7; MTD at 4-5 (citing ¶¶63, 67, 72, 75-77, 79-81,
 16 86). As the Ninth Circuit has made clear, such “puffing” is not actionable. *See Oregon Public*
 17 *Employees Ret. Fund v. Apollo Group, Inc.*, 2014 WL 7139634, at *5 (9th Cir. Dec. 16, 2014)
 18 (“inherently subjective ‘puffing,’” such as statements preceded by qualifiers like “[w]e believe,”
 19 “would not induce the reliance of a reasonable investor”); *Police Ret. Sys. of St. Louis v. Intuitive*
 20 *Surgical, Inc.*, 759 F.3d 1051, 1060 (9th Cir. 2014) (“‘optimistic, subjective assessment hardly
 21 amounts to a securities violation’”) (citation omitted); MTD at 4-5.¹

22
 23 ¹ Plaintiff’s reliance on decisions pre-dating this authority is misplaced. Opp. at 7; *see also*
 24 *Intuitive Surgical*, 759 F.3d at 1060 (distinguishing *Warshaw v. Xoma Corp.*, 74 F.3d 955, 959-
 25 60 (9th Cir. 1996)). The contention that certain conference call statements were not puffery
 26 because they allegedly were made to quell investor concerns (Opp. at 7) is also unavailing.
 27 Courts, including the Ninth Circuit, have held conference call responses similar to those here to
 28 be mere puffery. *See Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 2012 WL 1868874,
 at *3, *13 (N.D. Cal. May 22, 2012) (response regarding “very, very large” opportunity at
 hospitals was puffery), *aff’d*, 759 F.3d 1051 (9th Cir. 2014); *see also* 759 F.3d at 1060 (same).
 Plaintiff’s attempt to distinguish *Intuitive Surgical* (e.g., Opp. at 7) is unavailing, as it ignores the
 Ninth Circuit’s repeated findings that a wide variety of statements were puffery.

1 **B. The Premise of the SAC Remains Untenable**

2 **1. The Competitive Threat from Cisco Was Fully Disclosed.**

3 Unable to refute that Aruba repeatedly warned of competition from Cisco, plaintiff
 4 instead attempts to nitpick Aruba's disclosures. In particular, plaintiff contends that Aruba had a
 5 duty to provide details regarding Cisco's specific sales strategies. Opp. at 7. This is contrary to
 6 well-established law: a company is under no obligation to compare itself negatively to
 7 competitors or to provide specific details regarding competitors' sales strategies. *See* MTD at 5-
 8 6; *cf. also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 2014
 9 WL 4180845, at *11 (N.D. Cal. Aug. 22, 2014) ("[A]ll of the factors Plaintiff identified were
 10 publicly known through . . . SEC filings[;]" "[t]he securities laws do not require this level of
 11 paranoid disclosure" regarding competition.).² As this Court found, "Aruba disclosed it was
 12 facing competition from Cisco – both in its Form 10K and 10Q risk disclosures and during
 13 earnings calls." Order at 2. Defendants were not required to do more. Plaintiff's attempts to
 14 find fault with Aruba's disclosures are unavailing. MTD at 5-6.

15 **2. The Three Alleged Customer Losses Fail to Plead Falsity.**

16 The Opposition repeatedly touts three alleged customer losses as purported evidence of
 17 the falsity of the challenged statements. *E.g.*, Opp. at 3-8. Plaintiff fails, however, to provide
 18 any contextual details, arguing that it is not required "to specifically tie the omissions regarding
 19 the severe impact of Cisco competition to specific revenue declines." Opp. at 8. By failing to
 20 provide any context, plaintiff ignores the Court's order, which made clear that merely alleging
 21 the loss of a customer does not equate to a "decrease in market share, competitive advantage, or
 22 revenue." Order at 2. In the absence of allegations such as "how much of the company's
 23 business" the three customers represented, "the ratio of clients lost to clients added," "how many
 24 projects were or were not in the pipeline," or any "other facts necessary to infer that losing [these

26 ² Moreover, the suggestion that investors were unaware of "bundling" is inaccurate. *See*
 27 MTD at 6 n.2; *see also Reinschmidt v. Zillow, Inc.*, 2014 WL 5343668, at *6 (W.D. Wash. Oct.
 28 20, 2014) ("Where information has been made credibly available to the market by other
 sources[,] a failure to disclose that information is not actionable.") (citation omitted).

1 customers] would significantly impact the company’s overall financial performance[,]” plaintiff
 2 fails to demonstrate how the three alleged customer losses rendered optimistic statements
 3 regarding Aruba’s ability to compete against Cisco and technological differentiation false when
 4 made. *Id.* Plaintiff’s failure to demonstrate a connection between any statement and the alleged
 5 customer losses is fatal to its claim. *See, e.g., Reinschmidt*, 2014 WL 5343668, at *2, *10
 6 (optimistic statements regarding display advertising revenue generally were not rendered
 7 misleading by alleged omissions regarding the termination of a display advertising customer).

8 Moreover, the absence of any particularized facts showing the purportedly crippling
 9 effect of the alleged losses is not surprising. Indeed, plaintiff does not – and cannot – dispute
 10 that, despite the alleged loss of these three customers before November 15, 2012 (¶72), when
 11 Aruba announced results for 1Q13 on November 15, 2012, it reported a 21% increase in revenue,
 12 and the following quarter, it reported a 23% increase. MTD at 8.

13 **3. No Facts Are Pleaded Showing Materially Declining Market Share.**

14 The Opposition only serves to highlight the absence of any factual support in the SAC
 15 showing materially declining market share. Indeed, neither the SAC nor the Opposition provides
 16 any comparative market share statistics or contextual details. Instead, plaintiff just repeats the
 17 same expressions of optimism regarding “bake off[s],” ability to win, and technological
 18 differentiation and contends that the statements were misleading because of the same three
 19 alleged customer losses cited throughout the SAC. Opp. at 8. Plaintiff never explains how these
 20 alleged customer losses impacted market share in any way, much less pleads particularized facts
 21 showing a material decline in Aruba’s market share. MTD at 7-8.

22 **4. No Facts Are Pleaded to Show Cisco Products’ Purported Superiority.**

23 Plaintiff also continues to challenge a number of statements expressing optimism
 24 regarding Aruba’s technological differentiation and ability to win new accounts. *E.g., Opp. at 3-*
 25 5 (“False Statement[s]” 2, 3, 4). Like the SAC, however, the Opposition is devoid of any *facts*
 26 showing the purported superiority of Cisco’s products, much less that Aruba was a “sinking”
 27 ship (¶72) that could no longer compete. Instead, plaintiff points to: (1) CW allegations
 28 regarding the three customer losses, and (2) the opinions of former sales employees, none of

1 whom claims to have a technical background. Opp. at 3-5. As shown *supra* at 3-4, the three
 2 alleged customer losses fail to demonstrate the falsity of any statement. Merely repeating the
 3 same deficient CW allegations does not satisfy the requirements for pleading falsity. *See id.*;
 4 MTD at 8-11; *see also Brodsky v. Yahoo! Inc.*, 630 F. Supp. 2d 1104, 1113 (N.D. Cal. 2009)
 5 (Repetition of CW allegations “does not demonstrate that the CW’s allegations prove the falsity
 6 of each of Defendants’ statements.”). Likewise, the opinions of former sales employees
 7 regarding the purported superiority of Cisco products and tactics do not constitute particularized
 8 facts, nor do they suffice to show that any statement was false when made. MTD at 6-11.³

5. No Facts Are Pleaded Regarding Project Pipeline/Momentum.

10 Plaintiff’s challenge to statements allegedly made regarding Aruba’s “project pipeline”
 11 and “revenue momentum” on March 27, 2013 (Opp. at 6, “False Statement #6”) also fails. In
 12 addition to the fact that these cited statements are forward-looking and thus protected by the Safe
 13 Harbor (*see infra* Section II), plaintiff fails to plead a single fact regarding Aruba’s pipeline in
 14 March 2013 (*i.e.*, the project pipeline “both in the area of large-scale MOVE architecture-
 15 oriented campus LAN and ClearPass-oriented access management” (¶86)), much less
 16 particularized facts showing that the statements were false when made. Instead, plaintiff again
 17 contends that the statements were false because Mr. Orr failed to discuss past customer losses
 18 and unspecified deal delays. Opp. at 6. Defendants, however, had no duty to make comparisons
 19 to Cisco (*supra* at 3), nor did the alleged customer losses that plaintiff contends occurred long
 20 before March 2013 render the March statements about expectations for the future false.

6. Plaintiff Fails to Plead Falsity as to the May 7, 2013 Announcement.

22 Plaintiff contends that certain of Mr. Orr’s statements in the May 7, 2013 press release,
 23 which attributed a push out of customer orders in April 2013 “primarily to a challenging
 24 economic environment worldwide[,]” were false. Opp. at 6 (“False Statement #7”). According

26 ³ Plaintiff’s reliance on *In re Questcor Securities Litigation*, 2013 WL 5486762 (C.D. Cal.
 27 Oct. 1, 2013) (Opp. at 5) is misplaced, as Questcor’s main product accounted for 99% of
 28 revenue. Unlike Questcor, Aruba has a number of different products sold to customers in a wide
 variety of industries. MTD at 8 n.5. Thus, statements about the technical advantages of certain
 products and/or customer wins do not have a direct correlation to total revenue as in *Questcor*.

1 to plaintiff, the “true reason” for the 3Q13 revenue and income shortfalls was the loss of the
 2 three accounts that allegedly occurred more than six months earlier. *Id.*; ¶90. Yet, the only
 3 allegation offered is the opinion of CW10 (¶90), which fails on multiple grounds.

4 *First*, the allegations attributed to CW10 in ¶90 do not attempt to tie the 3Q13 results to
 5 the three alleged customer losses. Rather, the allegations consist merely of CW10’s opinion
 6 “Aruba missed its Q3 numbers” due to Cisco’s allegedly superior sales approach and products.
 7 ¶90. *Second*, plaintiff concedes that CW10 left Aruba in March 2013 – *i.e.*, CW10 left Aruba
 8 before the end of 3Q13 and is opining on financial results that had not yet been concluded.
 9 *Third*, plaintiff does not contend that CW10 had any involvement in the preparation of the
 10 forecasts or financial results; his opinions on such topics are thus of little weight.

11 Plaintiff’s attempts to rely on the purported “end of the Class Period” admission that
 12 Aruba “cannot compete” with Cisco to demonstrate falsity are equally unavailing as no such
 13 admission was made. Opp. at 1, 6, 8. The alleged statement referenced only a “small single-
 14 digit number of deals” involving bundling with data centers. ¶140. Moreover, the alleged
 15 statements regarding increased competition from Cisco in no way suggest that Defendants knew
 16 months earlier that the revenue guidance could not be achieved.⁴ Finally, Aruba’s continued
 17 success refutes any notion that it “cannot compete.” See MTD at 2-3, 8, 15.⁵

18 II. THE FORWARD-LOOKING STATEMENTS ARE NOT ACTIONABLE

19 A. Many of the Challenged Statements Are Forward-Looking

20 Although plaintiff appears to concede that the revenue guidance was forward-looking
 21 (*e.g.*, ¶¶83-85), plaintiff inconsistently argues that statements about future margin estimates
 22 (¶86), ability to win new accounts (¶75), gaining share (¶63), and momentum (¶80) were
 23 “historical and present facts.” Compare Opp. at 9 with MTD at 11. Plaintiff is incorrect.
 24 Forward-looking statements include: “a projection of revenues,” “the plans and objectives of

25
 26 ⁴ See, e.g., *Browning v. Amyris, Inc.*, 2014 WL 1285175, at *20 (N.D. Cal. Mar. 24, 2014)
 27 (“Acknowledging that Amyris had more trouble scaling up its process than anticipated does not
 show that the defendants always knew that the projections were unattainable”).

28 ⁵ Plaintiff labels the February 21, 2013 revenue forecasts as “False Statement #5.” Opp. at 5.
 Such forecasts are subject to protection under the Safe Harbor. See *infra* Section II.

1 management for future operations,” “a statement of future economic performance,” and “any
 2 statement of the assumptions underlying or relating to” the foregoing. 15 U.S.C. § 78u-5(h)(i)(1).

3 **B. The Statements Were Accompanied by Meaningful, Cautionary Language**

4 Plaintiff concedes that the forward-looking statements were accompanied by warnings,
 5 but argues that the cautionary language does not preclude liability because of Defendants’
 6 purported knowledge of Cisco’s pricing and bundling strategies. Opp. at 9. As before, plaintiff
 7 erroneously conflates the independent subsections of the Safe Harbor. The Ninth Circuit has
 8 made clear that, “if a forward-looking statement is identified as such and accompanied by
 9 meaningful cautionary statements, then the state of mind of the individual making the statement
 10 is irrelevant, and the statement is not actionable[.]” *In re Cutera Sec. Litig.*, 610 F.3d 1103, 1112
 11 (9th Cir. 2010). Thus, the statements are protected under the Safe Harbor’s first subsection.⁶

12 **III. PLAINTIFF FAILS TO PLEAD A STRONG INFERENCE OF SCIENTER**

13 **A. Plaintiff Fails to Provide Any Direct Evidence of Scienter**

14 **1. The CWs’ Opinions and Supposition Do Not Suffice to Plead Scienter.**

15 Unable to point to any particularized facts giving rise to a strong inference of scienter,
 16 plaintiff continues to rely heavily on the opinions and speculation of former employees. Opp. at
 17 10-12. Not one of these CWs, however, purports to have personal knowledge as to what any
 18 individual defendant knew at the time of any challenged statement. The CW allegations thus fail
 19 to raise a strong inference of scienter. *See City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*,

20

 21 ⁶ In any event, the suggestion that Aruba made no disclosures during the Class Period
 22 regarding Cisco’s sales strategies is refuted by its SEC filings. Aruba cautioned that it expected
 23 competition to intensify and that a number of Aruba’s competitors, including Cisco, had “greater
 24 name recognition, larger customer bases and significantly greater financial, technical, sales,
 25 marketing and other resources.” MTD at 2. Aruba warned that such competition “could reduce
 26 our market share, require us to lower our prices, or both.” *Id.* Plaintiff’s contention that the
 27 subsequent addition of the word “bundle” to Aruba’s risk disclosures somehow rendered past
 28 disclosures inadequate also is erroneous. Opp. at 9. Even though it was under no obligation to
 make any statements regarding competitors’ tactics (MTD at 5-6), Aruba warned throughout the
 class period that “[p]otential customers may prefer to purchase from their existing suppliers[,]”
i.e., bundle new products with existing products. *Id.* at 2. Aruba also cautioned that some
 competitors made acquisitions “to offer a more comprehensive solution” and “possible
 consolidations may . . . be able to offer greater pricing flexibility, making it more difficult for
 [Aruba] to compete effectively, including on the basis of price, sales and marketing programs,
 technology or product functionality.” Ex. 4, at 18.

1 2013 WL 2156358, at *9 (N.D. Cal. May 17, 2013) (“The SAC does not allege that CW6 had
 2 any contact with the individual defendants; thus, CW6 offers ‘little, if any, reliable basis from
 3 which to infer scienter.’”) (citation omitted); *In re Rackable Sys., Inc. Sec. Litig.*, 2010 WL
 4 3447857, at *9 (N.D. Cal. Aug. 27, 2010) (allegations insufficient where CWs “are not alleged
 5 ‘to have had any interaction or communication with any of the defendants, or to have provided
 6 any defendant with information, or to have heard or read any statement by any defendant, that
 7 contradicted or even cast doubt on a public statement””) (citation omitted); MTD at 8-11, 12-13.⁷

8 Likewise, plaintiff’s allegations that the Defendants purportedly accessed Salesforce data
 9 on a daily basis and attended meetings where unspecified reports were discussed (Opp. at 11-12)
 10 fail to identify contemporaneous, specific information in any defendant’s hands that rendered
 11 any challenged statement false when made. Missing from the SAC “are allegations linking
 12 specific reports and their contents to the executives, not to mention the link between the
 13 witnesses and the executives.” *Intuitive Surgical, Inc.*, 759 F.3d at 1062-63; *Browning*, 2014
 14 WL 1285175, at *16 (“[A]llegations such as that a defendant . . . ‘tracked [] demand using data’
 15 ‘[a]re insufficient to plead scienter’ . . . if the plaintiff cannot allege ‘hard numbers or other
 16 specific information’ about what the data showed.”); MTD at 9-10.⁸

17

18 ⁷ Plaintiff erroneously suggests that the fact that CW5 (like most of the other CWs) had no
 19 direct contact with the Defendants “does not diminish the value of their information.” Opp. at
 20 11. Courts routinely hold to the contrary. *See Intuitive Surgical*, 759 F.3d at 1062-63
 21 (allegations based upon “impressions of witnesses who lacked direct access to the executives”
 22 lacked the requisite “link between the witnesses and the executives”); *In re Accuray, Inc. Sec.*
 23 *Lit.*, 757 F. Supp. 2d 936, 949 (2010) (“difficult to surmise how the opinions and observations”
 24 of CWs who had no contact “could support a reasonable inference about what . . . Defendants
 knew”); MTD at 8-11, 12-13. Plaintiff’s reliance on *Reese v. Malone*, 747 F.3d 557 (9th Cir.
 25 2014) is misplaced (Opp. at 11), as the cited passage does not refer to a CW, but rather, to a
 26 defendant. 747 F.3d at 572. *Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1073-79
 27 (C.D. Cal. 2012) also is inapposite. Opp. at 11. Although the Court noted that hearsay did not
 28 “automatically” render CW statements unreliable, the Court granted the motion to dismiss,
 finding the CW allegations to be deficient on multiple grounds. 905 F. Supp. 2d at 1073-79.

8 Plaintiff’s attempts to rely on a core operations inference are also unavailing. Opp. at 12-
 13. The factors set forth in *South Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 785-86 (9th Cir.
 2008) for invoking the doctrine are not present here: (1) no facts are alleged as to each
 defendant’s “actual” contemporaneous exposure to contradictory information; and (2) the
 circumstances fall far short of those so “rare” that it would be “absurd” not to impute scienter.
 The circumstances in *Questcor* (Opp. at 13) are readily distinguishable. 2013 WL 5486762, at
 *2-14 (misrepresentations pertained to a single product that accounted for 99% of revenue).

1 **2. Plaintiff Fails to Plead Scienter as to the February 2013 Guidance.**

2 The February 2013 revenue guidance was forward-looking and accompanied by
 3 meaningful cautionary language and thus protected under the Safe Harbor. *Supra* at 6-7.
 4 Plaintiff nevertheless argues that the guidance is actionable because its proximity to the May
 5 2013 reduction in guidance, as well as certain of the CW allegations, purportedly demonstrate
 6 that “Defendants had no reasonable basis for the guidance and were aware of facts tending to
 7 seriously undermine its accuracy.” Opp. at 12. As noted above, the Ninth Circuit has rejected
 8 that very argument, holding that, under the first subsection of the Safe Harbor, “the state of mind
 9 of the individual making the statement is irrelevant[.]” *Cutera*, 610 F.3d at 1112.

10 In any event, plaintiff’s argument lacks factual support. Plaintiff fails to identify any
 11 specific facts purportedly known to Defendants in February 2013 that rendered the guidance
 12 knowingly false when made. Instead, plaintiff points to CW allegations contending that
 13 salespersons were failing to meet quotas, certain salespeople were leaving the Company, and
 14 Aruba purportedly was losing customers to Cisco. Opp. at 12 (citing ¶¶57, 72, 93, 140).
 15 Missing are any particularized facts demonstrating the purported impact of these alleged issues
 16 on the guidance or that they were not taken into account in formulating the guidance. *See, e.g.,*
 17 *Alaska Elec. Pension Fund v. Adecco S.A.*, 434 F. Supp. 2d 815, 828 (S.D. Cal. 2006) (noting
 18 CWs’ failure to “provide any allegations quantifying the impact of the[] alleged improprieties on
 19 [the company’s] revenues, or . . . financial results”), *aff’d*, 256 F. App’x 74 (9th Cir. 2007).⁹

20 **B. The Motive Allegations Fail to Provide the Missing Inference of Scienter**

21 **1. The Stock Sales Were Neither Unusual Nor Suspicious.**

22 Plaintiff does not – and cannot – dispute two key facts: (1) the alleged stock sales were
 23 pursuant to predetermined Rule 10b-5 plans, and (2) Messrs. Orr and Melkote sold only a small

25 ⁹ Merely listing sales employees who allegedly left during the Class Period does not suffice
 26 to plead scienter. MTD at 12 n.7; cf. *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981,
 27 1002 (9th Cir. 2009) (plaintiffs must allege that the departure “at issue was uncharacteristic when
 compared to the defendant’s typical hiring and termination patterns or was accompanied by
 suspicious circumstances”). Nor does the speculation of a former contract employee regarding
 the reasons for the departure of the general counsel suffice to show scienter. MTD at 12 n.7.

percentage of their holdings during the class period. MTD at 13-14; Opp. at 14. Courts routinely have held that such sales do not raise a strong inference of scienter. MTD at 13-14; *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1069 (N.D. Cal. Jul. 23, 2012) (10b5-1 plans provide “innocent, alternative explanation for the stock sales,” thus “negat[ing] an inference of scienter.”); *Wozniak v. Align Tech., Inc.*, 2011 WL 2269418, at *14 (N.D. Cal. June 8, 2011) (“typically ‘larger sales amounts’ than 37%” needed to show scienter) (citation omitted).

7 Unable to refute this, plaintiff attempts to portray the timing and size of the 2013 sales as
8 suspicious. Opp. at 14-15. That sales were made in the latter part of the class period, however,
9 does not alter the fact that the sales were pursuant to trading plans and a small portion of the total
10 holdings. *Id.* Moreover, plaintiff's allegations refute the claim that the size of sales was unusual
11 or inconsistent with past practices. *See, e.g., ¶109* (reflecting Mr. Orr's sale of over 100,000
12 shares in December 2012), *¶125* (alleging Mr. Melkote sold 450,000 shares in September 2010).

C. Plaintiff's Allegations Fail Under a Holistic Analysis

14 As shown in the prior motion to dismiss and in the Opening Brief, multiple competing
15 inferences weigh against scienter here. MTD at 14-15. In particular, Aruba’s continued
16 financial success – both during and after the Class Period – provides a powerful competing
17 inference directly belying the contention that Defendants knew that Aruba would be “unable to
18 overcome” competition from Cisco. *Id.*¹⁰

CONCLUSION

Defendants respectfully request that the Complaint be dismissed with prejudice.

21 | Dated: December 17, 2014

Respectfully submitted,

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²⁸ ||| ¹⁰ Because the Section 10(b) claim fails, the Section 20(a) and 20A claims fail. MTD at 15.